

Planning Commission Staff Report

February 1, 2007



Case:	9-62-06VW
Project Name:	St. Michael Senior Housing
Location:	3028 Hikes Lane
Owner(s):	St. Michael Eastern Orthodox Church
Applicant:	Sawm
Representative:	Hughes Architecture, Inc. Bardenwerper Talbott & Roberts, PLLC
Project Size/Area:	1.36 Acres
Jurisdiction:	Louisville Metro
Council District:	11 – Kevin Kramer
Case Manager:	Beth Allen, Planning Supervisor

Request

The applicant requests approval of a change in zoning from R-4 Single-Family Residential to R-7 Multi-Family Residential on 1.36 acres and approval of a development plan to construct 38 dwelling units for senior housing. Also requested are related variances to allow a structure to encroach into the rear yard of Lot 2, to allow parking to encroach into the side yard of Lot 2, to allow the parking to encroach into the front yard of Lot 1, to allow existing parking on the residual R-4 Tract to encroach into the side yard, to allow a VUA (fire access) to encroach into the rear yard of Lot 1, a waiver of Section 10.2.4 LBA requirements between the proposed multi-family lots and the residual lot containing the church facilities, and a waiver to allow the fire access VUA to encroach into the 15' LBA on Lot 1.

Staff Recommendation

Staff recommends **approval** of the zoning change and the development plan, **approval** of the waivers, and **approval** of the variances subject to all associated binding elements contained within this report.

Case Summary/Background

Summary

The subject site currently consists of one parcel of 8.13 acres in the Neighborhood Form District with frontage on Hikes Lane, a minor arterial. The site is currently owned by St. Michael Eastern Orthodox Church and is occupied

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by 6 structures and parking associated with the church itself. The applicant is proposing to separate off two parcels from the large tract and construct senior housing units on them. The property is generally flat and open with some mature trees. The south fork of Beargrass Creek (a blueline stream) runs along the south property line. According to the Natural Resource Conservation (NRCS) soil report, the soils of the parcel are well-suited to the proposed development but are prone to erode easily upon removal of the protective cover of vegetation.

The site contains two historic resources associated with the history of the Hikes Family. One is the George Hikes Sr. House built around 1790 and its associated landscaping. The other is the Hikes Cemetery which is actually adjacent to the subject property in the northeast corner.

Site Context

There is primarily low to medium density residential zoning surrounding the property all within the Neighborhood Form District. However, the property is on a TARC transit route and is very near and has TARC access to the Regional Center form district along the Breckinridge Lane corridor to the east. A small pocket of C-1 zoning also lies to the west of the site at the intersection of Hikes Lane and Klondike Lanes.

Immediately bordering the property to the east is the St. Barnabas Catholic Church property. To the south and on the other side of Beargrass Creek are R-5 zoned subdivisions beyond which lies Klondike Park. Bordering the property on the west are O-R3 and R-7 zoned properties occupied by an office/residential use and apartments respectively. To the north and across Hikes Lane there are numerous R-5 zoned subdivisions.

Background/Previous Cases on Site

The site is currently occupied by several structures and parking associated with the St. Michael Eastern Orthodox Church. A Category 2 plan for expansion to parking and building expansion was approved in 2003 (2-58-03) along with an associated landscape plan (L-207-03).

Land Use / Zoning District / Form District

	Land Use	Zoning	Form District
Subject			
Existing	Single-Family Residential	R-4	Neighborhood
Proposed	Multi-Family Residential	R-7	Neighborhood
Surrounding			
North	Single Family Residential (Highgate Springs Subdivision, Hikes Point Subdivision)	R-5	Neighborhood
South	Single Family Residential (Midlane Park Subdivision)	R-5	Neighborhood
	Klondike Park	R-5	Neighborhood
East	St. Barnabas Catholic Church	R-4	Neighborhood
	Single Family Subdivisions (Orchard Manor & Midlane Park)	R-5, R-6	Neighborhood
West	Apartments	R-7	Neighborhood
	Office Residential	OR-3	Neighborhood
	Commercial	C-1	Neighborhood

Waivers

The applicant is requesting a waiver of the A.2 buffer (10' LBA and 3 trees/100'; 6' screen) requirements between the proposed multi-family lots and the residual lot containing the church facilities. The applicant wishes to integrate the senior housing units with the church property and facilities rather than separate them. Staff is in support of this waiver request.

A wavier is also being requested to allow an emergency fire access road to encroach 10' into a portion of the required 15' LBA along the rear of Lot 1. The access was mandated by the fire department in this specific location. The applicant has agreed to construct the access road using pervious paving materials that are also acceptable to the fire department. Staff is in support of this waiver request.

Variances

The applicant is requesting the following variances:

Location	Requirement	Request	Variance
1. Lot 2	15' Rear Yard setback	7.4' setback	7.6'
2. Lot 2	3' Side Yard setback	0" setback	3'
3. Lot 1	15' Front Yard	2.5' setback	12.5'

4. Lot 1	15' Rear Yard	5' setback	10'
5. Residual Tract	5' Side Yard	0' setback	5'

The applicant is requesting the variances in order to allow the lot lines to be created for mortgage purposes, to keep the parking interior to the church complex rather than on the perimeter, and to preserve the integrity of the historic features on the site. Staff supports variances due to the fact that the variance conditions are a result of the lot lines required for mortgage/phasing purposes. A full analysis of the variances will be provided in the staff report for the public hearing.

Staff Findings

Community Form

1.B.3 Suburban Neighborhood Form District & 3.1 Compatibility

The site lies within the Neighborhood Form District, which is characterized by predominantly residential uses that vary from low to high density and that blend compatibly into the existing neighborhood areas. Staff finds the proposed R-7 zoning compatible with this area given the existing range of zonings including R-4, R-5, R-6, R-7, and OR-3 surrounding the site, its location along a TARC route, and its proximity to the Regional Center form district along Breckinridge Lane.

3.2, 3.3 Consideration of Building Materials, Residential Compatibility, 3.10 Variety of Housing Types

The applicant has provided architectural renderings/elevations of the proposed structures for the rear lot (Lot 1). These elevations have been reviewed and determined by staff to comply with the LDC requirements for multi-family residential structures.

The structure for Lot 2 is planned for a future date and the applicant has agreed to bring the elevations/renderings for that structure to the Land Development & Transportation Committee for review and approval prior to requesting a building permit for that structure. (See binding element no. 12.)

3.9, 3.1, 3.23, Visual Impacts, Buffers, Setbacks, Building Heights

The plan complies with requirements for screening/buffering against the adjacent R-4 zoned property to the east (occupied by St. Barnabas Catholic Church) by providing a 15' Landscape Buffer Area (LBA) along this property line which must contain a 6' continuous screen and 2 trees per 100'.

Per the LDC, the zoning change proposed for the senior housing lots kicks in buffering requirements between the housing units and the residual lot containing the church facilities. Because the applicant wishes to integrate the housing with the church, a waiver is being requested for this buffer requirement.

4.1, 4.3, 4.6, 9 Design of Open Space, Outdoor Recreation, Open Space Requirement

This development is required to provide 10% of each lot's net area in designated Open Space. 3,030 s.f. of open space is required for Lot 1 and 2,914 s.f. of open space is required for Lot 2. Those requirements have been met but some corrections/clarifications do need to be made to the identification of these areas on the plan.

5.2, 5.3, 5.4 Historic Resources, Distinctive Cultural Features, Preservation and Reuse of Historic Sites

There are two historic features associated with this proposal; one is the George Hikes Sr. House built around 1790 and its associated landscaping. The other is the Hikes Cemetery which is actually adjacent to the subject property in the northeast corner. Since pre-app the applicant has worked with staff to provide a plan that respects the integrity of both features. The proposed senior living facilities have been moved away from the Hikes House and landscaping and the required cemetery buffer of 30 feet has been provided around the cemetery.

Mobility / Transportation

7.3, 7.9, 7.10, 7.13, 7.16 Transit Supportive Development, Dedication of ROW, Adequate Parking, Joint & Cross Access, Unified Access & Circulation

Ten feet of right-of-way will be dedicated along the proposal's frontage on Hikes Lane and since it is a transit route, TARC has required that the applicant provide a boarding area for the residents of the proposal.

Sidewalks are shown to connect from Hikes Lane to the parking areas for each lot and parking has been provided in accordance with the LDC requirements for senior housing.

Cross-over access easements and agreements are shown on the plan for access through the residual tract to the two new proposed lots.

As requested by Metro Parks, the applicant has provided a pedestrian easement from the senior housing east toward Klondike Park that is located nearby. This easement could, in the future, be extended to make a direct connection to the park.

An emergency access drive was added to the rear of Lot 1 per a mandate by the Fire Department. The drive encroaches into the 15' rear yard setback as well as the 15' LBA. However, since for public health and safety reasons, the access drive cannot be eliminated, staff supports the waiver and variance on condition that the access drive be constructed of pervious paving materials. (See binding element no. 14).

Livability Environment

13.5 Tree Canopy;

Tree Canopy Data has been provided on the plan in accordance with LDC requirements.

10.1, 10.6, 10.7, Impact to Watershed, Compensatory Storage, Stormwater Runoff

A runoff mitigation area has been provided on the residual tract in the southeast corner of the property per MSD requirements.

10.5, 10.12 Blueline Streams, Stream Corridors

Since the pre-app meeting, the applicant has made substantial revisions to the plan in order to fully comply with the 100' stream buffer that is required along Beargrass Creek at the rear of the property. Proposed lots 1 and 2 are now completely outside of that buffer.

Waiver Requests:

1. **Waiver of Section 10.2.4 which requires an A.2 buffer (10' LBA and 3 trees/100'; 6' screen) between the proposed multi-family lots and the residual lot containing the church facilities.**
 - a. **Staff finds that the waiver will not adversely affect adjacent property owners** because the adjacent property owner is the church (the applicant), and it is the applicant's concept to integrate the senior housing with the church campus rather than separate the two; **AND**
 - b. **Staff finds that the waiver will not violate specific guidelines of Cornerstone 2020** because the development complies with all screening and buffering requirements against adjacent property owners on all other property perimeter lines; **AND**
 - c. **Staff finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant** because it will allow the proposed infill development to be constructed as part of the larger church campus and allow the housing and church facilities to be integrated with each other; **AND**
 - d. **Staff finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect)** because the applicant has made efforts with this proposal to retain existing plant material on the larger church property that will enhance the proposed housing structures and contribute to the overall appearance of the site.
2. **Waiver of Section 10.2.4.B to allow the emergency fire access road to encroach 10' into a portion of the required 15' LBA along the rear of Lot**
 - a. **Staff finds that the waiver will not adversely affect adjacent property owners** because the encroachment of 10' only occurs for a distance of 50' along the east property line of 332 feet and there will still be 5 feet of room for providing required screening and buffering materials; **AND**

- b. **Staff finds that the waiver will not violate specific guidelines of Cornerstone 2020** because the development will still comply with the screening and buffering materials required along this property line; **AND**
- c. **Staff finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant** because the emergency fire access drive is mandated by the Fire Department to be in this particular location to meet public safety needs; **AND**
- d. **Staff finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect)** because the applicant has agreed to construct the fire access drive out of pervious paving materials that are acceptable to the fire department.

Variance Requests:

1. **Request to allow the building on Lot 2 to encroach 7.60 feet into the 15' rear yard of Lot 2.**
2. **Request to allow parking to encroach 3 feet into the 3' side yard of Lot 2.**
3. **Request to allow parking to encroach 12.5 feet into the 15' front yard of Lot 1.**
4. **Request to allow the fire access drive to encroach 10 feet into the 15' rear yard of Lot 1.**
5. **Request to allow parking to encroach 5 feet into the 5 foot side yard of the residual tract.**
 - a. **The variances will not adversely affect the public health, safety or welfare** because they result from the need to create lot lines for the two proposed structures for mortgage purposes only to allow construction of the facilities **and**;
 - b. **The variance will not alter the essential character of the general vicinity** because it will allow parking to be located on the interior of the overall church campus rather than along perimeter property lines where adjacent property owners will be affected and it will allow construction of the senior housing in a setting that is integrated with an established church use and near other institutional buildings such as the St. Barnabas church to the east; **and**
 - c. **The variance will not cause a hazard or a nuisance to the public** because the variances will allow parking to be placed in the interior of the site and have allowed the project to be designed as infill without negative impacts to the existing historic structures and Beargrass Creek on the main church campus; **and**
 - d. **The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because** of all reasons stated above.

In making these findings staff considered:

The special circumstances which give rise to these variances are the need to create lot lines around the proposed housing structures for construction mortgage purposes.

Strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land because it would force the proposed structures and related access and parking to sprawl over much more of the existing church campus, negatively affecting the historic Hikes structure and landscaping and the Beargrass Creek blueline stream corridor.

The circumstances are not the result of actions taken by the applicant subsequent to adoption of the regulations but are instead because of the need to create separate lots for the proposed structures.

Relationship to Neighborhood, Small Area, Corridor or Other Plan(s)

This site is not in the area of any small area or neighborhood plans.

Standard of Review

Criteria for granting the proposed rezoning:

1. The proposed rezoning complies with the applicable guidelines and policies of Cornerstone 2020; OR
2. The existing zoning classification is inappropriate and the proposed classification is appropriate; OR
3. There have been major changes of an economic, physical, or social nature within the area involved, which were not anticipated in Cornerstone 2020, which have substantially altered the basic character of the area.

Criteria for approving waiver:

1. The waiver will not adversely affect adjacent property owners; **and**
2. The waiver will not violate specific guidelines of Cornerstone 2020; **and**
3. The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; **and**
4. Either:
 1. The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); **or**
 2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

Criteria for approving variance:

1. The proposed variance will not adversely affect the public health, safety or welfare; **and**

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2. The proposed variance will not alter the essential character of the general vicinity; **and**
3. The proposed variance will not cause a hazard or a nuisance to the public; **and**
4. The proposed variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.

In making these findings, you must consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

Attached Documents / Information

- LOJIC map of subject site
- Applicant's Zoning Change, Waiver and Variance Justification Statements

Notification

Date Sent	Description	Recipients
12/1/06	Notice of December 14 th LD&T meeting	First and second tier adjacent property owners, neighborhood group listing for Council District 11
12/29/06	Notice of February 1 st Public Hearing	First and second tier adjacent property owners, neighborhood group listing for Council District 3

Proposed Binding Elements

1. The development shall be in accordance with the approved District Development Plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning

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Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.

2. The density of the development shall not exceed 23 dwelling units per acre for Lot 1 (16 units on .696 acres) and 32.88 dwelling units per acre for Lot 2 (22 units on .669).
3. The applicant shall submit a plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by Planning Commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
 - a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
 - b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
 - c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
 - d. Location of construction fencing for each tree/tree mass designated to be preserved.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance permit) is requested:
 - b. The development plan must receive full construction approval from *Louisville Metro Department of Inspections, Permits and Licenses and the Metropolitan Sewer District*.
 - c. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan and dedicating additional right-of-way to Hikes Lane. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - d. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the proposed lots/owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

5. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
6. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
7. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
8. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
9. The address number(s) shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
10. Trees will be preserved and/or provided on site as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the LDC. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
11. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 1, 2007 Planning Commission meeting.

12. Prior to issuance of a building permit for the structure on Lot 2, the applicant shall bring elevations and renderings in compliance with the Multi-Residential Building Design Standards of the Land Development Code to a Land Development and Transportation Committee meeting for review and approval by said committee.
13. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
14. The emergency access drive required by the Fire Department at the rear of the building on Lot 1 shall be constructed of pervious paving materials that are acceptable to the Fire Department.

**LOCATION MAP
ST. MICHAEL SENIOR HOUSING
9-62-06VW**

